

Derek Core appeals his convictions for robbery as a class B felony,¹ criminal confinement as a class B felony,² and carrying a handgun without a license as a class A misdemeanor.³ Core raises three issues, which we revise and restate as:

- I. Whether the evidence is sufficient to sustain his convictions for robbery, criminal confinement, and carrying a handgun without a license; and
- II. Whether his convictions for robbery and criminal confinement violate the prohibition against double jeopardy.

We affirm.

The relevant facts follow. On October 21, 2006, Core, Gregory Larkett, and another person walked into a store and asked JoAnn Threatt, an employee of the store, for a job application. While Threatt was looking for an application, Core pointed a handgun at her and asked “where the money was.” Transcript at 44-45. Threatt pointed to a drawer behind the counter, which Core attempted unsuccessfully to open. After Threatt opened it for him, Core emptied the drawer of money and then asked “where the safe was.” Id. at 46-47. Threatt told him that it was in the back of the store, and Core, still pointing the gun at her, pushed Threatt to the back of the store. Core then pushed Threatt to the floor in front of the safe, and she opened it. Core took money and some debit

¹ Ind. Code § 35-42-5-1 (2004).

² Ind. Code § 35-42-3-3 (Supp. 2006).

³ Ind. Code § 35-47-2-1 (2004) (subsequently amended by Pub. L. No. 118-2007, § 35 (eff. July 1, 2007); Ind. Code § 35-47-2-23 (2004).

cards, and then the three men left. “[E]xtremely fearful” and “very upset,” Threatt called the police. Id. at 79.

On October 26, 2006, Indianapolis Police Department Officer Jeff Chappell observed a vehicle matching the description of a vehicle seen at several local robberies. When the vehicle exceeded the speed limit in a school zone, Officer Chappell initiated a traffic stop. Larkett was seated in the driver’s seat, and Core was in the passenger’s seat. When Officer Chappell learned that Larkett’s license had been suspended, he searched the vehicle and found a loaded handgun under Larkett’s seat. Core’s fingerprints were found on the gun. Threatt later identified Core in a photo array as the individual who held her at gunpoint during the robbery.

The State charged Core with robbery as a class B felony, criminal confinement as a class B felony, and carrying a handgun without a license as a class A misdemeanor. At Core’s trial, Larkett testified pursuant to the conditions of his plea agreement that he and Core had robbed the store and that Core had held Threatt at gunpoint. Larkett also testified that the handgun found in his vehicle belonged to Core and that Core had placed it under the driver’s seat. The State presented evidence that, at the time of his arrest five days later, Core was wearing the same hooded sweatshirt and hat that he wore on the day of the robbery. The jury found Core guilty as charged. The trial court sentenced Core to fifteen years for robbery, ten years for criminal confinement, and one year for carrying a handgun without a license, to be served concurrently. Thus, Core received a total sentence of fifteen years in the Indiana Department of Correction.

I.

The first issue is whether the evidence is sufficient to sustain Core's convictions for robbery, criminal confinement, and carrying a handgun without a license. When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess witness credibility or reweigh the evidence. Id. We consider conflicting evidence most favorably to the trial court's ruling. Id. We affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." Id. (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)). It is not necessary that the evidence overcome every reasonable hypothesis of innocence. Id. at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. Id. Moreover, the uncorroborated testimony of one witness, including an accomplice, may be sufficient by itself to sustain a conviction on appeal. Toney v. State, 715 N.E.2d 367, 369 (Ind. 1999).

A. Robbery and Criminal Confinement

The offense of robbery is governed by Ind. Code § 35-42-5-1, which provides that "[a] person who knowingly or intentionally takes property from another person or from the presence of another person . . . by using or threatening the use of force on any person . . . or by putting any person in fear . . . commits robbery, a Class C felony." The offense is a class B felony if "it is committed while armed with a deadly weapon or results in bodily injury to any person other than a defendant." Ind. Code § 35-42-5-1. Thus, to

convict Core of robbery as a class B felony, the State needed to prove that he knowingly took U.S. currency from or from the presence of Threatt by putting Threatt in fear or by using or threatening the use of force, and that he did so while armed with a handgun.

The offense of criminal confinement is governed by Ind. Code § 35-42-3-3, which provides that “[a] person who knowingly or intentionally . . . confines another person without the other person’s consent . . . or . . . removes another person, by fraud, enticement, force, or threat of force, from one (1) place to another . . . commits criminal confinement,” a class D felony. The offense is a class B felony if “committed while armed with a deadly weapon.” Ind. Code § 35-42-3-3. Thus, to convict Core of criminal confinement as a class B felony, the State needed to prove that he knowingly, by fraud, enticement, force, or threat of force, removed Threatt from the front of the store to the safe, and that he did so while armed with a handgun.

Core argues that the evidence is insufficient to support his conviction because Larkett’s testimony against Core “should be given little weight” as “there was bad blood between them.” Appellant’s Brief at 7. However, Core merely asks that we reweigh the evidence and judge the credibility of witnesses, which we cannot do. See Drane, 867 N.E.2d at 146

Core also argues that Threatt’s testimony should be discounted because “she never fully saw the face of the man with the gun.” Appellant’s Brief at 8. Threatt testified, however, that, even though Core was wearing a hat and sunglasses, she could see his eyes and the “silver stuff,” or “grill,” on Core’s teeth. Transcript at 45. Threatt also identified

Core in a photo array. Finally, on the day Core was arrested, he was wearing a hooded sweatshirt and hat that matched those worn by the armed robber on the day of the robbery. Accordingly, given the facts of the case, we conclude that the State presented evidence of a probative nature from which a reasonable trier of fact could find Core guilty of robbery and criminal confinement as class B felonies. See, e.g., Walsman v. State, 855 N.E.2d 645, 649 (Ind. Ct. App. 2006) (“We conclude that the reasonable inferences taken from the evidence are sufficient to support Walsman’s robbery conviction.”), reh’g denied.

B. Carrying a Handgun without a License

The offense of carrying a handgun without a license as a class A misdemeanor is governed by Ind. Code § 35-47-2-1, which provides that “a person shall not carry a handgun in any vehicle or on or about the person’s body, except in the person’s dwelling, on the person’s property or fixed place of business, without a license” Thus, to convict Core of carrying a handgun without a license as a class A misdemeanor, the State needed to prove that Core did, in a place not his dwelling, property, or fixed place of business, carry a handgun on or about his person or in a vehicle without a license.

Core argues that he did not have possession of the handgun. The Indiana Supreme Court has held that possession of a handgun may be actual or constructive. Henderson v. State, 715 N.E.2d 833, 835 (Ind. 1999). Actual possession occurs when a person has direct physical control over the item. Id. Constructive possession occurs when a person has “the intent and capability to maintain dominion and control over the item.” Id.

When constructive possession is asserted, the State must demonstrate the defendant's knowledge of the contraband. This knowledge may be inferred from either the exclusive dominion and control over the premise containing the contraband or, if the control is non-exclusive, evidence of additional circumstances pointing to the defendant's knowledge of the presence of the contraband.

Id. at 835-836. The intent element of constructive possession is shown if the State demonstrates the defendant's knowledge of the presence of the contraband. Goliday v. State, 708 N.E.2d 4, 6 (Ind. 1999). Proof of dominion and control has been found through a variety of means, including: (1) incriminating statements by the defendant, (2) attempted flight or furtive gestures, (3) proximity of the contraband to the defendant, (4) location of the contraband within the defendant's plain view, and (5) the mingling of the contraband with other items owned by the defendant. Henderson, 715 N.E.2d at 836.

Here, Larkett testified that the handgun found in his vehicle belonged to Core and that Core had placed it under the driver's seat. Furthermore, Core's fingerprints were found on the gun. Although Core argues that "Larkett's claims that the gun belonged to Core aren't credible," the jury found otherwise, and we cannot judge the credibility of witnesses on appeal. Appellant's Brief at 15. Accordingly, given the facts of the case, we conclude that the State presented evidence of a probative nature from which a reasonable trier of fact could find Core guilty of carrying a handgun without a license as a class A misdemeanor based on a theory that he constructively possessed the handgun. See, e.g., Deshazier v. State, 877 N.E.2d 200, 208 (Ind. Ct. App. 2007) (holding that, based on the totality of the circumstances, the evidence was sufficient to support

defendant's conviction based on a theory that he constructively possessed the handgun while seated in the vehicle, whether or not he actually transported the gun in the vehicle), trans. denied.

II.

The next issue is whether Core's convictions for robbery and criminal confinement violate the prohibition against double jeopardy. The Indiana Constitution provides that "[n]o person shall be put in jeopardy twice for the same offense." IND. CONST. art. 1, § 14. The Indiana Supreme Court has held that "two or more offenses are the 'same offense' in violation of Article I, Section 14 of the Indiana Constitution, if, with respect to *either* the statutory elements of the challenged crimes or the actual evidence used to convict, the essential elements of one challenged offense also establish the essential elements of another challenged offense." Richardson v. State, 717 N.E.2d 32, 49 (Ind. 1999). Core argues that his convictions violate the "actual evidence" test, not the "statutory elements" test.

"An offense is the same as another under the actual evidence test when there is a reasonable possibility that the evidence used by the fact-finder to establish the essential elements of one offense may have been used to establish the essential elements of a second challenged offense." Richardson, 717 N.E.2d at 53. However, the Indiana Supreme Court clarified this test in Spivey v. State, where it held that the test is not whether the evidentiary facts used to establish one of the essential elements of one offense may also have been used to establish one of the essential elements of a second

challenged offense; rather, the test is whether the evidentiary facts establishing the essential elements of one offense also establish all of the elements of a second offense. Spivey v. State, 761 N.E.2d 831, 833 (Ind. 2002). If the evidentiary facts establishing one offense establish only one or several, but not all, of the essential elements of the second offense, there is no double jeopardy violation. Id. .

Core contends that his convictions for robbery and criminal confinement of Threatt constitute double jeopardy because there is a reasonable possibility that the jury used the same evidentiary facts to establish the essential elements of each of the charges. “Generally, double jeopardy does not prohibit convictions of confinement and robbery when the facts indicate that the confinement was more extensive than that necessary to commit the robbery.” Merriweather v. State, 778 N.E.2d 449, 454 (Ind. Ct. App. 2002) (citing Hopkins v. State, 759 N.E.2d 633, 639 (Ind. 2001); Thy Ho v. State, 725 N.E.2d 988, 993 (Ind. Ct. App. 2000))

In support of his argument, Core relies on Vanzandt v. State, 731 N.E.2d 450 (Ind. Ct. App. 2000), trans. denied. In Vanzandt, we determined that the defendant’s robbery and confinement convictions violated the prohibition against double jeopardy. 731 N.E.2d at 455-456. The evidence in Vanzandt revealed that the defendant, while armed with a gun, ordered the victims to lie on the floor while he took money from a cash register and then fled in a victim’s car. Id. at 455. We concluded that compelling the victims to lie on the floor was not separate and apart from the force used to effectuate the robbery. Id. Because the defendant demonstrated there was a reasonable possibility that

the jury used the same evidentiary facts to establish criminal confinement of the victim as it did the robbery of that same victim, we concluded that conviction of both violated the Indiana Double Jeopardy Clause and, therefore, vacated the conviction for criminal confinement. Id. at 456. We find Vanzandt distinguishable.

Here, Core and his accomplices walked into a store and asked Threatt for a job application. While Threatt was looking for an application, Core pointed a handgun at her and asked “where the money was.” Transcript at 44-45. Threatt pointed to a drawer behind the counter, which Core attempted unsuccessfully to open. After Threatt opened it for him, Core emptied the drawer of money and then asked “where the safe was.” Id. at 46-47. Threatt told him that it was in the back of the store, and Core, still pointing the gun at her, pushed Threatt to the back of the store. Core then pushed Threatt to the floor in front of the safe, and she opened it. Core took money and some debit cards, and then the three men left. The act of pushing Threatt to the back of the store at gunpoint was separate from the act of taking money from the drawer and the safe, and we therefore conclude that there is no reasonable possibility that the jury used the same evidentiary facts to convict Core of robbery and the criminal confinement of Threatt. See, e.g., Merriweather, 778 N.E.2d at 455 (holding that defendant’s convictions for robbery and criminal confinement did not violate the actual evidence test where the evidence revealed a confinement separate and apart from the robbery); see also Boatright v. State, 759 N.E.2d 1038, 1044 (Ind. 2001) (affirming defendant’s convictions of robbery and confinement because the robbery conviction and the confinement conviction were

supported by two clearly separate acts); Thy Ho, 725 N.E.2d at 993 (finding no double jeopardy violation for convictions of criminal confinement and robbery where the evidence showed that victim's confinement was more extensive than necessary to commit robbery).

For the foregoing reasons, we affirm Core's convictions for robbery as a class B felony, criminal confinement as a class B felony, and carrying a handgun without a license as a class A misdemeanor.

Affirmed.

NAJAM, J. and DARDEN, J. concur